IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 36720 of 2004(U)

PETITIONER:

K.DEEPA,
RESIDING AT 2/986, KADAVANA HOUSE,
ERANHIPALAM P.O., KOZHIKODE-6,
TEMP. ASST. LIC OF INDIA.

BY ADV. SRI.C.P.MOHAMMED NIAS.

RESPONDENT:

LIFE INSURANCE CORPORATION OF INDIA,
REP. BY THE SENIOR DIVISIONAL MANAGER,
DIVISIONAL OFFICE, KOZHIKODE.

BY ADV. SRI.LAL GEORGE,
SRI.ANIMON A. JOHN,
SRI.G.ASHOK KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

W.P.(C). NO.36720/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LETTER SENT BY THE PETITIONER DTD. 04/10/99.

EXT.P.2: COPY OF THE JUDGMENT DT. 26/07/2004 IN W.P.(C). NO. 7756/2004 OF THE HONOURABLE COURT.

EXT.P.3: COPY OF THE REPRESENTATION DTD. 02/08/2004.

EXT.P.4: COPY OF THE REPRESENTATION DTD. 14/09/2004 ISSUED BY THE PETITIONER BEFORE THE RESPONDENT.

EXT.P.5: COPY OF THE LETTER DTD. 08/10/2004 ISSUED BY THE RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

= =

WP(C).No.36720 of 2004-U

= =

Dated this the 31st day of July, 2007.

JUDGMENT

The petitioner and eight others, who were appointed temporarily as Typists by the Life Insurance Corporation of India, filed O.P.No.14277/99 apprehending termination of their temporary appointments. An interim order was passed in that case on 11-6-1999 directing that the petitioners may be retained in service. Pursuant to that, the petitioner was appointed as temporary Assistant in the Neeleswaram Branch Office and was required to join duty by 10-7-1999. In the meanwhile, owing to pregnancy, she was unable to travel and even before the date fixed for joining duty, she applied on 5-7-1999 with a medical certificate seeking extension of time. Thereafter, she also produced the medical certificate of a Government doctor. It is a matter not in dispute that the other petitioners in

O.P.14277/1999 were provided appointments and they are continuing in service.

2. Petitioner made different representations, including Ext.P1 dated 4-10-1999 by which she had forwarded the medical certificate issued by Dr.E.Rajani of Government General Hospital, Kozhikode. The petitioner thereby requested issuance of early orders for reinstatement in service complying with the aforesaid interim order in O.P.14277/1999.

3. Thereafter, O.P.14277/1999 was dismissed along with a bunch of other matters following earlier judgments but with the observation that the LIC will consider the petitioners' case also, if they choose to fill up the vacancies of Typists in future.

4. The learned counsel for the LIC is right in pointing out that going by the judgment of the Apex Court in **State of Karnataka v. Umadevi (3)** [(2006) 4 SCC 1] and the

directions issued therein, the absorption of temporary hands is governed by the scheme formulated in terms of that judgment and the courts are not expected to issue directions for making such persons permanent in service contrary to the directions contained in the said judgment. All earlier decisions which run counter to the principles settled in that decision were also denuded of their status as precedents.

5. The interim order in O.P.14277/1999 was issued on 11-6-1999. The final judgment in that case, as already noticed, was delivered on 11-1-2000. That was rendered following earlier decisions of the High Court, including that of the Division Bench affirming similar judgments. All those judgments were rendered much before the judgment of the Apex Court in Secretary, State of Karnataka (supra). While such judgments of this Court cannot act as precedents in the light of the aforesaid decision in Secretary, State of Karnataka (supra) issued by the superior court and such fact has been clarified in paragraph 54 of that judgment, the parties to those

litigations are governed by the directions issued in those cases.

6. The interlocutory order dated 11-6-1999 in C.M.P.23677 in O.P.14277/1999 governed the parties till the final judgment in O.P.14277/99 was delivered on 11-1-2000. That interlocutory order was left become final between the parties and the LIC had not appealed against it. In fact, LIC acted on it and issued appointment orders, including to the petitioner. There is nothing on record to show that even after the judgment was delivered on 11-1-2000 in O.P.14277/1999, the status obtained by giving effect to the interlocutory order was, in any manner, meddled with. All that the petitioner says is that when LIC issued her an offer of appointment on the basis of the interim order of this Court during the pendency of O.P.14277/1999, her physical status as a pregnant woman did not permit her to travel to Neeleswaram and perform the duties and responsibilities attached to the post to which she was being appointed. Her such plea as against the stand taken by the LIC that she ought to have joined as ordered, is one that

survives in her favour on the face of the fundamental right to life as enshrined in Article 21 of the Constitution of India. It is not as if this Court was compelling the LIC to make temporary appointments or to regularise a temporary appointment. It is a case where the LIC accepted an interim order of this Court and made an offer of appointment which could not be enjoyed unfortunately by the petitioner, owing to her pregnancy and her resultant physical state which has been duly certified by the medical practitioner.

7. It was, obviously, in the aforesaid circumstances that this Court issued the directions contained in Ext.P2 judgment to consider the case of the petitioner in the light of the medical certificates. The issue of directing the LIC to make temporary appointment or to regularise a temporary appointment does not arise here. All that crops up for consideration is whether the LIC, having made an offer of appointment to the petitioner, could be permitted to wriggle out of it merely because of a ground referable to the status of

the petitioner as a pregnant woman and of her physical status incidental to pregnancy. This is totally impermissible.

8. Under the aforesaid circumstances, the impugned decision of the LIC in so far as it is against the petitioner is arbitrary and unsustainable. It is unconstitutional and therefore, void.

In the result, the impugned Ext.P5 is quashed and the respondents are directed to take up the case of the petitioner in the light of the directions contained in Ext.P2 and take a decision thereon, having regard to the entire facts and circumstances of the case, in a just and reasonable manner. Let a decision as afore-directed be taken within an outer limit of three months from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/